

## REMARKS

Claim 9 has been amended by incorporating limitations derived from original claims 11 and 12, from the first paragraph on page 13 (two different timescales and variance between envelopes), from the first two paragraphs and equation 5 on page 14 (short term burstiness within a traffic envelope), and from the third paragraph on page 14 (worst case effective bandwidth estimate) of the PCT publication.

Claims 10 and 15 have been amended by replacing the objected “and/or” with “or”.

Claims 11 and 12 have been deleted.

The indicated allowability of claim 13 is greatly appreciated.

Claim 16 has been amended by adding method limitations corresponding to the features of claim 9.

On the merits, the Examiner contended that independent claims 9, 16 were obvious in view of the combined teachings of Giroux and Qiu. However, compared to the amended claims 9, 16, Qiu *fails to disclose* using two estimates for estimating the worst case effective bandwidth demand, and then allocating to each class a proportion of the network resource dependent on the estimated worst case effective bandwidth demand for each class. There is also *no* suggestion in Qiu for using the estimates in the way defined in the amended claims 9, 16. Therefore, a skilled person would not arrive at the invention as now defined based on the combined teaching of Giroux and Qiu.

Reconsideration of the 35 U.S.C. §101 rejection of claim 16 is respectfully requested, because claim 16 is tied to a “network”, and to a method of providing a “communications network resource” to the network by allocating a proportion of the network resource to respective classes.

In keeping with the duty of candor, the following references were cited in foreign Patent Offices, and are listed in the accompanying Form PTO-1449 (U.S. Patent No. 6,240,066; U.S. Patent No. 6,594,268 (equivalent of Japanese Patent Application No. JP A 2000-286896); U.S. Patent No. 7,016,366 (equivalent of Japanese Patent Application No. A 2001-339427); U.K. Patent No. GB 2265793; European Patent No. EP 0774848; International Patent No. WO 97/14240; International Patent No. WO 00/27044; International Patent No. WO 00/74432; International Patent No. WO 02/09358, and Japanese Patent No. JP A H11341000 (no equivalents, abstract in English attached)). Consideration and entry of these references into the file is respectfully requested. The Commissioner is authorized to charge the Rule 17 (p) fee of \$180.00 to the undersigned's Deposit Account 11-1145.

Wherefore, a favorable action is earnestly solicited.

Respectfully submitted,

KIRSCHSTEIN, ISRAEL, SCHIFFMILLER & PIERONI, P.C.

Attorneys for Applicant(s)  
425 Fifth Avenue, 5<sup>th</sup> Floor  
New York, New York 10016-2223  
Tel: (212) 697-3750  
Fax: (212) 949-1690

/Alan ISRAEL/

---

Alan Israel  
Reg. No. 27,564